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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 11

Application Number: 09/150,360
Filing Date: September 09, 1998
Appellant(s): YERAZUNIS ET AL.

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For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed August 9, 2000.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

Upon further consideration, the status of the claims is as follows:

Claims 1-35 are allowed.

This appeal involves claims 36-40.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-15, 16-35 and 36-40 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Since claims 1-35 are allowed, only claims 36-40 remain on appeal. Claims 36-40 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,342,054	Chang	8-1994
4,835,621	Black	5-1989

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 36-40 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Black as stated in prior Office Action, Paper No. 6. The grounds for rejection is set forth in prior Office Action, Paper No. 3, ¶3 as applied to claims 1-2 and 16-18. The reason claims 36-40 were finally rejected was because the scope of those claims is the same as those of claims 1-2 and 16-18, whose merits have been previously treated.

Appellants' arguments as applied to claims 1-35 are found persuasive. As a result, claims 1-35 are now allowed as indicated in the status of the claims ¶3 above.

Pertaining to the appealed claims 36-40, appellants argue that said claims recite features that do not appear in claims 1-2, 6-7 and 16-18, and therefore, should not have been finally rejected. Examiner disagrees.

As mentioned earlier, the scope of claims 36-40 reads on claims 1-2 and 16-18, whose merits have been previously treated. For example, as highlighted by appellants in the arguments (Brief, p. 11), claim 36 require a memory configured to store at least one of audio and video data such that the later stored data is recorded over previously stored data; a non-volatile memory; and a controller configured to transfer the data

stored in the memory to the non-volatile memory. It emphasized that all of the above highlighted features are covered in claim 1 and/or claim 16.

For instance, the language "at least one of audio and video data" is in alternative form, thus, showing a memory that stores video data is sufficient. In this respect, claim 36 is no difference than claim 1 and/or claim 16. Moreover, claim 1 and/or claim 16 prescribes a semiconductor memory in operation with a controller to serve both volatile and non-volatile memory functions. Recording data over previously stored data implies volatile memory function, and preserving video image data in the semiconductor memory implies non-volatile memory function. In prior Office Action, Paper No. 3, ¶3, the volatile and non-volatile memory functions have been addressed (see Chang, col. 2, lines 16-31, col. 9, lines 43-59, col. 11, lines 5-22).

Appellants further argue (Brief, p 14-15) that Chang is directed to non-analogous art because it is directed to a golf practice apparatus for obtaining and storing data of a golfer's swing, whereas the present invention is directed to a compact video image recording device which is mountable to a gun and useful for recording video images before and after the firing of the gun. However, it is emphasized that claims 36-40 have not claimed a compact video image recording device which is mountable to a gun as asserted. Even though claim 40 recites the data recording device further comprising a weapon, wherein the occurrence being detected is the firing of the weapon, the language does not give hint that a compact video image recording device is mountable to a gun as alleged. It is emphasized that claims 36-39 only recite the components of a memory device for used in recording an occurrence. In that respect, the Chang patent

meets the claimed limitations. Pertaining to claim 40, the previous examiner went as far as relying on Black in the prior Office Action, Paper No. 3, ¶3 to show that mounting a video camera system onto a gun is well known and used, and would have been obvious to one skilled in the art. Therefore, this position is still maintained.

It is believed the relevant issues pertaining to appealed claims 36-40 have been addressed. Contrary to appellants' assertion, prima facie case of obviousness had been established for claims 36-40 in the prior Office Action, Paper No. 3, ¶3. Therefore, the Final Office Action for rejecting claims 36-40 (Paper No. 6) was proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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October 10, 2000

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